IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:23-04-2007, 25.04.2007

CORAM:

THE HONOURABLE MR.JUSTICE A.C.ARUMUGAPERUMAL ADITYAN

CRIMINAL APPEAL No. 110 of 1999

Intelligence Officer
Narcotics Control Bureau
C3A Rajaji Bhawan
Besant Nagar, Chennai-90 ..Appellant/complainant

-vs-

1.A.S. Ponraj @ APR(died)

2.V.Rajamannar

3.R.Sundarrajulu .. Respondents/Accused

This appeal is filed under Section 378 Crl Pc of 1973 against the Judgment passed in C.C.No.9 of 1993 on the file of the Special Judge,NDPS Act, Chennai dated 25.8.1998.

For appellant : : Mr. N.P.Kumar
Special Public Prosecutor
for NCB Cases
For respondents: : Mr.V.Sambamurthy

JUDGMENT

This appeal has been preferred against the Judgment in C.C.No.9 of 1993 on the file of the Special Judge under Narcotic Drugs and Psychotropic Substances Act, Chennai dated 25.8.1998. The accused have been charged under Section 8 r/w Sections 8(21) (29) of NDPS Act.

2. The short facts of the case sans irrelevant particulars, for deciding this appeal are as follows:
On 17.12.1998 at about 10.30p.m., when the Officials of NCB conducted a search in the house of A3 in the presence of A2, they

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have seized a black colour Brief case voluntarily produced by A2 , on opening the said brief case, it was containing a kakki colour polythene bag, another polythene bag containing brown coloured granules, another polythene bag containing brown colour powder and 5 small bag with insulation tape super-scribed as four steel grip and a small sealed polythene bag containing brown colour powder, another 130 small packets in a condom superscribed as steel grip and an eversilver tiffin box containing six small packets in a condom and when the sample taken from the contents of the said pockets were examined with the help of a kit , it answered for the presence of heroin ,a Narcotics drug. The total amount of heroin power seized was 3.4kgs. On the information given by A2, the NCB Officials have proceeded to the office of A1 by name M/s Appu Creations at Directors Colony, Anna Main Road ,Kodambakkam, Chennai from the drawer of A1 100 gms of heroin and American dollars and Indian currency notes along with some documents were seized. A1 had no licence to possess heroin. .Hence A1 to A3 were charged under Section 8 read with Section 29 , 8,21 and 29 of NDPS Act.

3. The case was taken on file by the learned Principal Special Judge for NDPS Cases, Chennai as C.C.No.9 of 1993 and when the accused appeared before the learned Judge, charges as indicated above are framed and when questioned the accused pleaded not guilty.

4. Before the trial Court, on the side of the prosecution, P.Ws 1 to 7 were examined . Exs P1 to P73 were exhibited and , M.Os 1 to 18 were marked.

5. P.W.1 is the then Intelligence Officer of NCB during the period from May 1992 to May 1995. He is an Officer empowered under Sections 42 and 67 of NDPS Act to conduct search and arrest without warrant any person who contravenes the provisions contemplated under NDPS Act and also seize the contraband and also empowered to record his statement from any person who had contravene the provisions contemplated under NDPS Act. As per the intelligence, he has gathered after informing the same on 17.12.1992, he proceeded to the house of A3, Sundararajulu at Door No.126, Alwarpet Annex, Chennai -87, as per the Intelligence, he has gathered as to A1 Ponraj had handed over about 3 kgs of Narcotic drugs to A3 and in that regard, he had submitted a report under Section 42 of the NDPS Act under Ex P1 to his higher officials. In pursuance of the intelligence, he has gathered he has proceeded to the house of A3 along with other officials of NCB including a woman Officer. The superintendent of NCB, a gazetted officer also accompanied with the said team. When they went to the above said address of A3 and knocked at the door , A3 came and opened the door and after revealing their identification to him and also made a request to him to co-operate with NCB officials

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for a search to be conducted in his house. When they entered into the house , they saw a male person and a female person inside the house. The male person identified himself as one Rajamanar and the female person had identified herself as Shrimathi Bhavani, who is the wife of A3 Sundararajulu. P.W.1 has also identified A2 and A3 in the Court and also would admit that the child of Sundararajulu was also present in the house at the time of their visit. When the team entered into the house of A3, A2 after knowing that the people came to the house of A3 are the officials of NCB . Immediately, took them to the kitchen of the house of A3 and took out a brief case which is having the provision of combination lock and applying NO.555, A2 had opened the brief case which contained seven items of articles. Ex p2 is the Mahazar prepared for the seizure of the articles found in the said brief case. The first packet contained brown colour powder in a polythene cover, second packet contained another pocket containing the brown colour powder , third packet contained polythene packet containing brown colour powder, 4th packet was containing brown colour powder in a cylinder shaped container(condom), 6th packet contained 130 small packets containing brown colour powder superscribed as Feroze Stell grip wrapped with insulation tape.7th packet contains a tiffin box containing small packets in condom. The total quantity of 3.40kgs of brown colour powder were seized from the said brief case. The powder emanated medicinal smell. Two samples of 5 gms each were taken from each packet and marked as S1 to S22 and the remaining contraband were packed in a separate packet and sealed. The first packet was marked as p1 and the second packet was marked and separately packed and sealed was marked as P2 and third packet was separately packed and sealed as P3. 4th packet was separately packed by collecting all the brown colour powder from five packets packed together and sealed and marked as P4. The red colour insulation tape was separately packed and marked as P5. The contents of the 5th packet was separately packed and sealed as P6. The contents of 6th packet was separately packed and marked as P7. The contents of 7th packet was separately packed and marked as P8 . Apart from this, they have also seized a photograph and some of the documents which were also mentioned in the mahazar. In P1 to P8 packets , both A2 and A3 and his wife have signed. Before entering into the house of A3, they have also procured two witnesses viz., Sekar and Veeraraj and informing them that they were going to conduct search in door No.126, Alwarthirunagari Annex, and made a request to them to be present with them during the search as a witnesses for which they have also agreed. The above said witnesses Sekar and Veeraraj have also signed as witnesses in P1 to P8 packets. The other documents and photographs were packed separately and after affixing the NCB seal , they were marked as P9.In P9 also A2 and A3 and his wife have signed along with the above mentioned witnesses. P1 to P8 were placed in the same brief case, and locked with the combination lock and the same is marked as P10 in which also the above said witnesses A2 and A3

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and his wife have signed. The packet containing P1 to P8 are M.O.1.

5a) P.W.2 Thiru A.Vijayanathan was the then Intelligence Officer of NCB during August 1992 to August 1997. As per instructions of P.W.5 Thiru U.Chandrasekaran, the Superintendent of NCB,he(P.W.2) was in the office on 17.12.1992.On 18.12.1992 at about 1.00 a.m., P.W.5 Chandrasekaran contacted him(P.W.2) over telephone and informed that in the search conducted at door No.126,Alwarthirunagar Annex house , they came to know that the said house belonged to A.S.Ponraj(A!) and his office is at No.1, Anna Main Road, Directors Colony, Kodambakkam,Chennai-24 in the name of "Appu Creations" and instructed him(P.W.2) to go to the office of A1 and conducted a search. He immediately, prepared a report under Section 42 of NDPS Act and proceeded to Directors colony where the Appu Creations office is situate along with his colleague. Ex P26 is the report prepared by him under Section 42 of NDPS Act in which the Superintendent also has signed along with two witnesses viz., Isrel and Nethaji and after getting their consent to stand as witnesses for the search going to be conducted by them and they went inside the Appu Creations office on 18.12.1992 at about 1.30a.m., When he knocked at the door of Appu Creations office , a person by name Shanmugam came and opened the door when they went inside the office, they found another person by one Srinivasan was present and when he enquired about A1 A.S.Ponraj, the proprietor of Appu Creations, he was informed that he has left the office a short while. After informing Shanmugam and Srinivasan that they are going to conduct a search in the office and after getting their permission, they conducted the search in the office room of A1. When they opened the first drawer of A1 in the office, found a sum of Rs.30,000/- Indian currency notes and a traveller's cheque to the value of 5000 US dollars and when the second drawer was pulled, he could find some documents numbering eight and when he pulled the third drawer, he found a cover containing two small packets packed with adhesive tape. When he opened the cover, he found the packets containing brown colour powder in it. When samples were taken and tested it. It answered for the presence of heroin, a Narcotics drug. He seized the said packet containing the brown colour powder and traveller's cheque to the value of 5000 US Dollars and Indian currency notes of Rs.30,000/-. From Shanmugam and Srinivasan , they came to know that the abovesaid currency notes and US Dollars and brown colour powder belonging to A1. When the said brown powder were weighed separately, they weighed 5 gms. They have separately packed the powder and marked as PS1 and PS2. The said packets were placed in a polythene cover and again packed in a brown cover and sealed and marked as P3. Both the Indian currency notes and traveller's cheque to the value of 5000 US dollars were separately packed and marked as P4. The witnesses have also signed along with them in the said covers. He has also obtained

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signatures of Shanmugam and Srinivasan who were present at the time of search in the said office of A1. He has also prepared Ex P27 mahazar for the seizure of the above said articles and after the completion of search at about 6.00a.m., the annexure to Ex P27 Intelligence Officer Raghavan and the abovesaid two witnesses and Shanmugam and Srinivasan have also signed as witnesses. In Annexure No.2 to Ex P27 Intelligence Officer Raghavan two other witnesses apart from Shanmugam and Srinivasan have also signed as witnesses. In Annexure Nos.3 to 5 to Ex P27, the above said witnesses have also signed. Ex P28 is the visiting card of A1.Ex P30 is the account papers dated June 2 containing page Nos 5,6,19,20 and 100 .Ex P31 is the letter written by one Christopher to one Elango. In Ex P32, the names of valuable gems were written. Ex P33, is the letter written by one Seelan. Ex P34 is the deed of agreement between A1 and one Soundarapandian.It relates to the production of Cinema film. Ex P35 is the another agreement between A1 and one Ayubkhan.M.O.14 is the sealed cover marked P3 containing brown powder. M.O.15 is the packet containing Indian currency notes to the value of Rs.30,000/-,travellers cheque to the value of 5000 US Dollars which were marked as P4. The contents of M.O.15 was checked before the Court. The covers marked as PS1,PS2,PS3 and PS4 were kept in the godown of the office for safe custody with the forwarding memo Ex P36. Ex P37 is the acknowledgment of the godown keeper.Ex p38 is the statement of Srinivasan who was present at the time of search in the office "Appu Creations" of A1. The statement of Srinivasan and himself have signed. He has prepared a report under Section 57 of NDPS Act which is Ex P39. He has handed over in person PS!,PS2 packets to the customs laboratory for chemical examination. EX P40 is the chemical examination report. Ex P41 is the forwarding memo given by him(P.W.2) to the godown keeper of NCB to keep the packet containing the balance of brown powder,after taking the samples for chemical examination. M.O.16 is the said packet containing the balance of brown powder. Ex P42 is the receipt of acknowledgment given by the godownkeeper. M.O.16 was opened in the open Court and found the presence of PS1 and PS2 sealed packets. M.O.17 andM.O.18 are the packets marked as PS1 and PS2 respectively.

A1 gave a petition for return of the Indian Currency notes to the value of Rs.30,000/- which was seized at the time of a search along with a deed of agreement entered into between him and another person in respect of the film by name "Seevalaperi Pandi" On the objection raised by the Additional Public Prosecutor, the said petition filed by A1 in Crl.M.P.No.535/93 was dismissed. Ex C1 is the said order in Crl.M.P.No.535 of 1993. The superintendent in NCB had given instructions to him(P.W.2) to keep surveillance over the house of A1 and his office. As per instructions of the Superintendent of NCB , he went to the house of A1 to serve summons dated 7.1.1993. But he could not serve summons on A1 because he was not there. Then he proceeded to his office in the

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above said address but there also he was not available. Hence he affixed the summons on the outer door of his (A1) office and the mahazar was prepared by another Intelligence Officer byname Ashokraj. Ex P43 is the copy of the abovesaid summon. Ex P44 is the mahazar prepared by him. Ex P45 is the statement of Tmt.usha Ponraj, the wife of A1. Ex P46 is the letter of requisition given to the customs department to furnish the chemical examination report for PS1 and PS2.Ex P47 is the test memo sent by him along with Ex P46. The analyst has endorsed Ex P47 for having received Ex P46 letter of requisition.

5b) P.W.3 Thiru V.Sekar, is the painter in profession. According to him, on 17.12.1992 he along with his co employee Veeraraghavan went to Alwarthirunagar to search for a job. On the same day, night at about 10.30p.m., a car came and stopped near them and occupants of the car enquired about their employment. P.W.4 has informed them that he is a painter and he came there to have a tea and the inmates of the car asked them whether they are willing to stand as witnesses for the house search to be conducted by them and after getting their consent, they(P.W.3) also accompanied the officials to the house at Alwarthirunagar. Since the door was locked, the officials knocked at the door which was opened by a person to whom the officials informed that they are going to conduct a search . Thereupon, another male member inside the house took the officials to the kitchen of the house from where he brought a brief case and handed over the same to the officials.P.W.3 would say that only after the officials informed the person who opened the door that they are going to conduct a search to know whether any narcotic drug is found there. There after the another male member who was present in the house lead the NCB officials along with the witnesses to the kitchen from where he brought a brief case and handed over the same to the NCB officials.

5c)When the NCB Officials enquired the person who produced the brief case as to who gave the brief case to him,he replied that his sister's husband gave the brief case to him. Since the NCB Officials asked the said person who produced the brief case to open the same. He by using a number opened the combination lock of the brief case. There are several packets in a plastic cover in the brief case and there was only an eversilver tiffin box, containing a packet found there. When the packet was opened he could find a brown powder in it. The officials took a sample of powder in the said packet and packed and sealed the same and obtained signature from the witnesses. He(P.W.3) and Veeraraghavan also signed as a witnesses. Apart from this, packet of brown powder was seen in the container like Nirodh. A sample powder was taken from the said container. The balance of the powder was packed separately in another cover and sealed and he and other witnesses have signed on the said cover. The brief case was also packed and sealed. He and other witnesses have also signed on

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the brief case as witnesses.M.O.2 is the said brief case.M.O.1 is his signature(P.W.3)contained in M.O.2 brief case .M.O.3 is his signature on the cover containing the balance of brown powder. P.W.3 has also identified his signature in M.O.6 ,M.O.8, M.O.11,M.O.12 and M.O.13. M.O.13 was opened in the open Court. It contains small packets No.S1,S3.S5,S7,S9,S11,S13,S15,S17,S,19 and S21. P.W.3 would admit that the above said 11 powder packets which were taken out from M.O.13 also contain his signature.M.O.19 series are the elevan powder packets taken out from M.O.13 cover. P.W.3 would also admit that his signature finds a place in M.O.4,M.O.7, M.O.9 and M.O.8.Ex P3 is the photographs taken out from M.O.2 brief case which also contained his signature on the back.P.W.3 would admit that M.O.4 was also taken out from M.O.2 brief case and it also contains his signature.P.W.3 also admit that P4,P5,P7,P3 also taken out from M.).2 brief case and they also contain his signature. P.W.3 has also identified A2 and A3 are the persons present at the time when a search was conducted in their presence in a house at door No.126, Alwarthirunagar annex on 17.12.1992 after 11.00p.m.,

5d)P.W.4 is the care taker of Maheswari Wedding Hall at Choolai. He was previously residing at door No.42, Venus Thillai Nayagam Pillai Street, Perambur. On 17.12.1992 on information that his friend Paulraj was ill, he went to his house situate at Ram Theatre,Kodambakkam where he was informed that his friend's condition was serious, and was removed to hospital. He also went to the said hospital in 37D bus and after seeing his friend, who was taking treatment in the hospital, he left the place at 12 midnight and at about 12.45a.m., when he came near Liberty theatre, for a search of an autorickshaw, he was called by two officials and enquired him. The officials informed him that they are going to conduct search in a house at Directors colony, Anna Main Road and requested him to stand as a witness for a search to be conducted by them. He would say that the said officials have also sought for help from 2 or 3 persons who were standing along with him and thereafter the police officials took him and another witness in the car to a house at Anna Main Road. When they reached the said house, three other officials were also standing there. When the officials knocked at the door, the door was opened after five minutes . An aged person and a boy were found present in the said house. After informing them that they are going to conduct a search in the said house and enquired about the owner of the said house viz., "Appu creations", Ponraj(A1) a person informed the officials that A1 had left the house at 11.00p.m and that they do not know when he will return. When the officials informed the inmates of the house that they are going to conduct a search on the basis of the information received by them as to the presence of Narcotic drugs in the said house to which the inmates said that they have no objection for the officials conducting the house search. There is a hall and an office room

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and two of the officials sat on the table found in the office room pulled out the drawer of the table one after another and in the mean time, the other officials conducted search in the other room. In one of the drawers of the table cash was found. In the second drawer the officials found some visiting cards and documents and the third drawer two small packets were found wrapped in a polythene bag. When the bags were opened by the officials after removing the cellotape, brown colour powder was found. The officials had taken sample from the packet for conducting tests. After conducting the tests, the officials confirmed the presence of brown sugar a Nacortics drugs . With a help of a balance , the officials have weighed the contents found in the seized packets one by one. The total weight of the powder comes to 25 gms. They have placed the polythene packets in three covers and placed the currency notes and traveller's cheque in another cover and sealed the same. Thereafter the officials have obtained the signatures of the witnesses in those four packets. The witnesses have also identified his signature in Ex P27 .He would further admit that Ex P28 is the visiting cards seized on the date of house search. P.W.4 would further admit that Exs P28 to P35 were present in the said house on the date of house search. He would depose that 100 currency notes and the traveller's cheque were seized from the second drawer of the office room of A1. M.O.15 are the seized currency notes and traveller's cheques.M.O.15 series were also packed in a brown cover and sealed in which also he and other witnesses have signed and that the house search came to an end at about 5.30 a.m., on the following day ie. on18.12.1992.

5e)P.W.5 is the then Superintendent of NCB South zone , Chennai during 1991-1995. He is an empowered officer under Section 41(2) of NDPS Act He would depose that he knows A1 to A3 and on 17.12.1992 at about 5.30p.m., an Intelligence Officer Mr.Ashokraj had submitted a report under Section 42 of NDPS Act. Ex P1 is the said report. He had perused Ex P1 and took action on the basis of Ex P1 report,he along with P.W.1 Ashok raj an Intelligence Officer, Vijayalakshmi and another Intelligence Officer Mohan went to the place of occurrence mentioned in Ex P1. After reaching the said place, he asked the Intelligence Officer to bring two independent witnesses. Accordingly, Intelligence Officer Ashokraj went outside and brought two independent witnesses. He has informed witness Sekar and also two witnesses Veeraraghavan that he is going to conduct a house search in a house on the basis of an Intelligence that Narcotic drugs have been hidden there and P.W.5 also agreed to stand as a witness for the house search to be conducted by the officials. Thereafter he along with the other witnesses went to door No.126 Alwarthirunagar annex and knocked at the door, a person from inside the door No.126 came and opened the door and after revealing the identification to him by showing their identification cards. They also informed him about the purpose of their visit. The person has also informed that he is

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Sundararajulu, the owner and resident of the said house. p.W.5 has identified A3 in the Court. After getting the consent of A3, his house was searched. Another male person and a female person were found inside the house. The person inside the house had informed P.W.5 that his name is Rajamannar(A2) brother in law of Sundararajulu(A3).The woman found inside the house informed him that she is the wife of Sundararajulu and(A3).P.W.5 has also identified A2 and other person present inside the said house on the said date. When P.W.5 was informed that before he could conduct a personal search of A2 , he can search the person of P.W.5. But the second accused has informed that he does not require any such provision to be followed as contemplated under Section 50 of NDPS Act.

5f) The second accused volunteered before P.W.5 that he is the brother in law of A3 Sundararajulu A.S.Ponraj(A1) who gave a brief case containing three kilograms of Narcotics Drugs and asked him to keep the brief case in safe custody. A2 thereafter took the officials and other witnesses to the kitchen and took out a black colour Echolac brief case but it cannot be opened by P.W.5 since the said brief case was having combination lock provision. P.W.5 could open the said brief case with the help of Rajamannar(A2), and found seven items of properties inside the box. 4 polythene packets containing brown colour powder was found in a packed condition together with a red tape and there were 130 tablets found in a capsule and they were also packed with read adhesive tape in capsule form. An ever silver tiffin box was found inside the said brief case containing those packets in capsule form. When he enquired about this with A2 Rajamannar he (P.W.5) had informed him that they are heroin powder,a Narcotic drug. Thereafter, he (P.W.5) took samples from the four packets and tested the same and the test answered for the presence of heroin . All the brown colour powder taken out from five packets were poured in a container and after mixing them, he took a little sample for test . The test answered for the presence of heroin,a narcotic Drug. He poured brown colour powder from the capsule container and had taken a sample for test. The balance of brown powder in the condom were separately packed and sealed. He had conducted test by taking samples from each of the five packets and the test answered for the presence of heroin. The sample taken from six chocolate type packet contained in the tiffin box and the test also answered in the presence of heroin,a Narcotic drug. The samples taken from the above said packets measuring each 5 gms were separately packed and marked as S1, S2, to S22. The balance of the brown powder were separately packed and are numbered as P1 to P8 .

5g) Before packing the above said seven items, each item of brown colour powder was separately weighed and the total weight of brown colour powder in the seven items of packet comes to 3.40kilograms.Ex P2 mahazar was also prepared when the brief case

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was once again searched, when found a passport and a gold flake cigarette packet and a photograph. When P.W.5 enquired A2, about the person in the photograph, A2 informed that he is Ponraj(A1) who gave the said brief case containing Narcotic drugs to him. He seized all the above said contrabands and packed and affixed NCB seal on each and every sample. He has obtained the signature of Sundararajulu(A3) Rajammannar(A2) and the wife of Sundararajulu and has also packed Exs P1 to P8 in a similar way and obtained the signatures from Sundararajulu and his wife. The passport and other documents seized from the brief case were separately packed and affixed with NCB seal and marked as P2. P1 to P8 packets were again placed in the same brief case and packed and sealed. In the said brief case also both the witnesses , Rajamannar(A2) and Sundararajulu(A3) and his wife have signed . The said brief case was also wrapped with brown cover and marked as P10 and the above said five persons have also signed as witnesses M.O.1 is the said packet. M.O.2 is the said brief case in which the narcotics drugs were found. M.O.3 is the cover containing P1. M.O.4 is the cover in which P2 sealed packet was kept with the signatures of the above said persons. Mo.5 is the brown cover containing the signatures of the above said persons in the packet marked as P3.M.O.6 is the brown cover containing P4 with the signatures of the above said five persons.M.O.7 is the bundle marked as P5 on which the above said five persons have signed. M.O.8 is the brown cover in which sealed P6 cover was kept. M.O.9 is the brown cover containing P7.M,.O.10 is the cover in which packed and sealed tiffin box was kept and marked as P8. M.O.11 is the brown cover in which P9 cover was kept with the signature of the above said five persons. M.o.12 is the 11 packets marked as S2 to S22 containing double digit number .M.O.13 series are 11 sample packets marked as S1 to S22 containing single digits number. M.O.9 is the brown cover containing M.O.1,3 to 12. Ex P3 to Ex P7 are the photographs and other documents taken from M.O.2 box. M.O.3 to M.O.7 were seized and placed in a cover packed and sealed and marked as P9 in which also witnesses and A2 and A3 have signed. A mahazar was prepared and the witnesses and A2 , A3 and A3's wife have signed. The said mahazar was prepared by P.W.1 on the spot. He has also signed as a witness in the mahazar which is ExP2. The mahazar was completed on 18.12.1992 at about 3.00a.m., At about 10.oop.m. He had contacted another Intelligence officer Vijayanathan of NCB and asked him to go to the office of A1 viz., Appu Creations, No.1, Anna Main Road, Directors Colony, Chennai-24 and conducted search in the said office and Viajayanathan has also submitted a report under Section 42 of NDPS Act which is Ex P26. He has also signed in Ex P26 before that he has also perused the same.

5h) A2 has also given a statement there itself stating that due to his ill health, he could not go to NCB Office and give a statement. According to his wish, his(A2) statement was recorded

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by his brother in law Sundararajulu(A3). Immediately, he has directed Ashokraj Intelligence Officer to record the statement of Sundararajulu(A3) has and to record the statement of A2 Rajamannar. Rajamannar has also signed in the said statement. Since the statement was recorded in the presence of Ashokraj , he has also signed as witness. The said statement of A2 Rajammanar is Ex P8. As requested by A2, he was admitted in the "Best Hospital" by Ashokraj, the Intelligence Officer. He has instructed both Sundararajulu and his wife to go to NCB Office at about 9.00a.m., on the same day. P.W.5 has returned to his office along with the materials seized by him. On the next day at about 9.30 a.m., A3,Sundararajulu,came to NCB Office along with his wife. He (P.W.5) has asked Mohan, another Intelligence Officer to enquire Sundararajulu and his wife and to record their statements. He has also directed another Intelligence Officer Vijayalakshmi to record the statement of the wife of A3. The statement of Sundararajulu is under Ex P48, the Intelligence Officer Mohan has also signed as witness in it. On 19.12.1992, Ashokraj and Vijayanathan, the Intelligence Officers have submitted a report under Section 57 of the NDPS Act in respect of the objects seized by them. Ex P30 to ExP39 are the report under Section 57 of NDPS Act.

5(i)Thereafter A1 to A3 were arrested by the Intelligence Officer Ashokraj and produced before the Judicial Magistrate for Judicial remand. Since A2 Rajamannar was not well,and was admitted in the Best hospital he could not be produced before the Judicial Magistrate for Judicial remand. This information was passed on to the doctor with a request to go to the best hospital. The seized articles were weighed with the help of mechanical balance available with NCB. He would depose that the godown at NCB's Office is a recognised godown. He had instructed Ashokraj to enquire A1. But Ashokraj informed him that the whereabouts of A1 is not known and requested him to issue summons to A1 and that the summons could not be served on him on two or three occasions. Since he was not found available in the address furnished by him. Thereafter the summon was affixed on the front door of the house of A1. A Mahazar to that effect was also prepared. After knowing that A1 Ponraj was surrendered before a Court,he(P.W.5) had filed the necessary application before the Court for Court custody of A1. As per the orders of Judicial Magistrate, the Intelligence Officer Ashokraj went to the Central Jail and enquired Ponraj. But Ponraj was not co-operating with the enquiry to be conducted by the Intelligence Officer Ashokraj. Since A1 has not replied to any one of the questions posed by the Intelligence Officer Ashokraj, he had prepared a Mahazar to that effect.

5j)P.W.6 is an employee at Appu Creations, run by A1 Ponraj. Since A1, and A3 were not present in the Court and were exempted from appearing before the Court on the petition filed by them under Section 317 of Cr.P.C ,he could not identify A1 and A3. He

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would corroborate the evidence of P.W.2 Shanmugam regarding the house search conducted at Appu Creations , the office of A1.He would depose that he was the office boy of Appu Creations during the relevant point of time(18.12.1992) and speaks about the house search conducted by P.W.2 and the seizure of currency notes and the packets of brown powder and also American 5000 dollars. He would admit his signature in Ex P27mahazar for the recovery of the above said material objects. He would further admit that Ex P28 visiting card was also seized by P.W.2 on the same day. According to him, documents were seized by P.W.2 from the second drawer of the office of A1 .He would admit that Exs P28 to P35 were seized by P.W.2.He would admit that he has signed in M.O.14,M.O.15,M.O.17 and M.O.18 along with the other witness Srinivasan . Ex P49 is the statement given byP.W.6.

5f) P.W.7 is the chemical examiner of the Customs House Laboratory. He would say that he is the qualified analyst. ExP22 is the test memo given to him for analysing whether brown powder is contained in 11 sealed brown covers and that he took samples from the brown powder containing in 11 covers and in this he can find the presence of dy-acetylel Morphine in the tested samples. Ex P.50 is the report of the chemical examiner. Ex P53 is the final report of the expert. M.O.13 is the remaining sealed samples which were entrusted to the Intelligence Officer Ashokraj on 4.2.1993. He would depose that from the experiment conducted by him, he came to know that samples subjected for chemical examination contained Dy-acetyle Morphine which is heroin. On 21.12.1992, the Intelligence Officer Vijayanathan brought two sealed packets which also contained NCB seal. He had compared the specimen seal in the test memo and the seal found on the two packets produced by Vijayanathan.Ex P47 is the test memo given by Vijayanathan.He has also acknowledged for having received those two packets in Ex P47 itself. On opening those sealed covers, he found plastic covers containing brown colour powder. When the said powder were weighed with the help of mechanical balance before the samples were taken for chemical examination. The result of the chemical examination confirmed the presence of Dy-acetyle Morphine (heroin) in the sample.Ex P40 is the report furnished by him on 3.2.1993.The balance of the brown colour powder were packed and sealed on 4.2.1993 and returned to Thiru A.Vijayanathan, Intelligence Officer . M.O.14 is the returned brown colour powder. He would say that the seized brown powder were weighed with electronic balance.

6. When incriminating circumstances were put to the accused under Section 313 Cr.P.C., they would deny their complicity with the crime. Neither oral nor documentary evidence was let in on the side of the accused.

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7.After going through the oral and documentary evidence available before the trial Court, the learned trial Judge has come to a conclusion that the charges levelled against accused have not been proved beyond any reasonable doubt and accordingly acquitted all the accused under Section 235(1)of Cr.P.C. Aggrieved by the findings of the learned trial Judge, the complainant/Intelligence Officer, Narcotics Control Bureau, Chennai has preferred this appeal.

8. Now the point for determination in this appeal is whether the findings of the learned Trial Judge is perverse in nature to warrant any interference from this Court?

9. Heard Mr. N.P.Kumar, Special Public Prosecutor for NCB Cases appearing for the appellant and Mr.V.Sambamurthy, learned counsel appearing for the respondents and considered their rival submissions.

10. The Point:
When the appeal was taken up for hearing, the learned counsel appearing for the respondents/accused would inform the Court that A1 is now no more and to that effect, the learned counsel has also filed the death certificate to show that A1 died on 3.9.2002 and his death was recorded in the Corporation of Madurai on 27.12.2003.Under such circumstances, the charge against A1 abates. The learned Special Public Prosecutor for NCB Cases is also admit that A1 is now no more.

11. Mr.V.Sambamurthy, the learned counsel appearing for the respondents/accused would focus the attention of this Court to the evidence produced by the prosecution before the trial Court and contended that there is no material available against A3 to take a view different from the view already taken by the trial Court against A3. A3 Sundararajulu is the owner of the house bearing door No.126, Alwarthirunagar Annex, Chennai-87 where the search was conducted by P.W.1 along with the witness and P.W.5. At the time of search, according to P.W.1, A3 and A2 were present in the house along with the wife of A3 and that the brief case M.O.2 which contained M.O.1series and M.O.3 to M.O.10 . It is the definite case of the prosecution that A2 has informed NCB Officials that M.o.2 brief case was handed over to him by his brother-in-law A1 Ponraj. Apart from this ,except the fact that from the kitchen of the house from where M.O.2 brief case containing Narcotic Drugs mentioned above was taken out by A2 and produced to NCB Officials. There is absolutely no evidence available on record to link A3 with the crime. No witness on the side of the prosecution has deposed that A3 had knowledge about

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the presence of Narcotic Drugs in M.O.2 brief case placed in his house. It is not the case of the prosecution that in the presence of A3, A1 had handed over M.O.2 brief case containing Narcotic Drugs to A2 to place the same in the kitchen of the house of A3. Under such circumstances, there is absolutely no incriminating circumstances against A3 to implicate in the crime. I do not find any reason to interfere with the findings of the learned trial Judge for having come to the conclusion that charge against A3 has not been proved beyond any reasonable doubt to warrant conviction under the NDPS Act.

12.The learned Special Public Prosecutor for NCB Cases would draw the attention of this Court to the statement of A3(Page 250 in the typed set of papers) wherein he has stated that by way of answer to the question that why he did not object A2 in keeping the brief case containing heroin in the kitchen of the house of A3,he has answered that he had believed his brother-in-law Rajamannar(A2) and he informed him that the brief case belongs to A1. No reliance can be attached to the above answer given by A3 in his statement Ex P48.The learned Special Public Prosecutor would contend that A3 also had knowledge of M.O.2 brief case was containing Heroin. But a careful reading of Ex P48 would go to show that no way in his statement A3 has admitted that M.O.2 brief case contains heroin at the time A2 placed the same in the kitchen of his house. He has stated that he believed A2 as to that the brief case was handed over by A1 to be placed in his house. It is not the case of the prosecution that the said M.O.2 was handed over by A1 to A2 in the presence of A3. Under such circumstances, we cannot draw adverse inference against A3 that he had knowledge about the presence of Narcotic drugs viz., heroin in the M.O.2 brief case at any point of time. Even according to the case of the prosecution, M.O.2 brief case was taken out from the kitchen of the house of A3 and produced before NCB Officials only by A2 and not by A3. A3 would have got knowledge about M.O.2 brief case to the effect that contains Narcotic drugs then immediately on seeing NCB Officials, he would have taken them to the kitchen and produced M.O.2 to the NCB Officials. Under such circumstances, I do not find any reason to interfere with the findings of the learned trial Judge that the charge levelled against A3 is not proved beyond any reasonable doubt.

13. Let us come to the part played by A2 in this case. According to P.W.1, M.O.2 brief case containing M.O.1 series and M.O.3 to M.O.10 were produced by A2. Even at page 160 of the typed set of paper, in Ex P8 statement of A2 also A2 would admit that his brother in law A1 P.S.Ponraj had handed over M.O.2 brief case to be kept in the kitchen of the house of A3 and it is the definite case of A2 that even at the time of handing over of M.O.2 brief case, A1 has informed that it contains heroin. Further he

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would admit in his statement Ex P8 that he took two samples of heroin parcel which were packed in condom from M.O.2 brief case and handed it over to A1 at his office on 16.12.1992. When the office of A1 was searched by P.W.2 Vijayanathan on the same day on 17.12.1992 two boxes of heroin were seized from the drawer of the office of A1. The learned counsel appearing for A2 would contend that a mandatory provision under Sections 42 and 50 of NDPS Act was not followed in this case, and that this lapse will vitiate the entire case of the prosecution. The learned counsel appearing for A2 would contend that only on the basis of information received,P.W.1 conducted the search in the house of A3 on 17.12.1992.But as per Section 42 of the said Act, he ought to have recorded the information, he received in writing and submitted the same to his higher officials which he has not done in this case and hence the edifice of the prosecution case shall collapse.

Section 42 of the NDPS Act runs as follows:

> "Power of entry, search, seizure and arrest without warrant or authorisation-(1) Any such officer(being an officer superior in rank to a peon, sepoy or constable) of the departments of central excise, narcotics, customs, revenue intelligence or any other department of the Central Government including para-military forces or armed forces as is empowered in this behalf by general or special order by the Central Government, or any such officer(being an officer superior in rank to a peon, sepoy or constable) of the revenue, drugs control, excise, police or any other department of a State Government as is empowered in this behalf by general or special order of the State Government, if he has reason to believe from personal knowledge or information given by any person and taken down in writing that any narcotic drug, or psychotropic substance, or controlled substance in respect of which an offence punishable under this Act has been committed or any document or other article which may furnish evidence of the commission of such offence or any illegally acquired property or any document or other article which may furnish evidence of holding any illegally acquired property which is liable for seizure or freezing or forfeiture under Chapter V-A of this Act is kept on concealed in any building, conveyance or enclosed place, may between sunrise and sunset,-
> (a) enter into and search any such building,

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conveyance or place;
(b) in case of resistance, break open any door and remove any obstacle to such entry;
(c) seize such drug or substance and all materials used in the manufacture thereof and any other article and any animal or conveyance which he has reason to believe to be liable to confiscation under this Act and any document or other article which he has reason to believe may furnish evidence of the commission of any offence punishable under this Act or furnish evidence of holding any illegally acquired property which is liable for seizure or freezing or forfeiture under Chapter V-A of this Act, and
(d) detain and search, and if he thinks proper, arrest any person whom he has reason to believe to have committed any offence punishable under this Act.
Provided that if such officer has reason to believe that a search warrant or authorisation cannot be obtained without affording opportunity for the concealment of evidence or facility for the escape of an offender, he may enter and search such building, conveyance or enclosed place at any time between sunset and sunrise after recording the grounds of his belief.
(2) Where an officer takes down any information in writing under sub Section (1) or records grounds for his belief under the proviso, he shall within seventy two hours send a copy thereof to his immediate official superior."

The only point to be decided in this case is whether the law was set in motion by P.W.1 against the accused on the basis of any specific information from any person or from the Intelligence generated in the mind of P.W.1. The learned counsel appearing for A2 would contend that even P.W.1 would admit in his evidence that on the basis of the information received, he had informed his superior officer as contemplated under Section 42 of NDPS Act and if P.W1 has not received any information, then it is not necessary for him to report the same under Section 42 (2) to P.W.5 immediately superior officer under Ex P1.But this contention of the learned counsel for A2 cannot be acceptable because even in Ex P1 it has been categorically stated by P.W.1 that only on the intelligence, developed in him which indicated that one Sri.A.S.Ponraj @ A.P.R(A1) has deposited 3 kgs of heroin at the premises at Door No.126,Alwarthirunagar Annexe, Madras-87. He has

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not stated in Ex P1 that only on the information , he has received a report under Section 42 of NDPS Act as submitted his superior officer P.W.5's evidence is also noteworthy in this regard. No way P.W.5 has stated that P.W.1 has informed him that he had received information to the effect that A1 has hidden narcotics drugs at door No.126, Alwarthirunagar Annexe, Madras-87. The word"intelligence" is not been defined anywhere in the NDPS Act. The learned counsel appearing for A2 relying on State of Himachal Pradesh-vs- Pawan Kumar(2005(3) Supreme 321) and contended that if a word has been defined in the Act then the Court has to resort to the meaning given in the dictionary. In the said case, even though, the word"person" was not defined in the Code of Criminal Procedure. The word"Person" has been defined under Section 11 of the Indian Penal Code. Under such circumstances, only it has been held by the Apex Court that the cardinal rule of construction of statutes is to read the statute literally, that is, by giving to the words used by the legislature their ordinary, natural and grammatical meaning. If, however, such a reading leads to absurdity and the words are susceptible of another meaning, the Court may adopt the same. But if no such alternative construction is possible, the Court must adopt the ordinary rule of literal interpretation. It is admitted that the word"Intelligence"is not been defined under NDPS Act. The contention of the learned counsel appearing for A2 that "Intelligence also would mean "information "cannot be upheld because in the absence of any definition in the word"intelligence"in NDPS Act necessarily we have to resort to the Oxford Dictionary for the meaning"Intelligence". The New Oxford Dictionary of English edited by Judy Pearsall, University Press at Page No.949 says "Intelligence" means, 1. the ability to acquire and apply knowledge and skills; an eminent man of great intelligence they underestimated her intelligence, a person or being with this ability Extraterrestrial intelligence.2. The collection of information of military or political value the chief of military intelligence (as modifier) the intelligence department. People employed in this , regarded collectively. British intelligence has been able to secure numerous local informers information collected in this way. The gathering of intelligence is general news. So in the absence of any evidence that Intelligence is formed by way of collection of information the alternative his inference , we can have it as to the ability to acquire and apply knowledge and skills. It is clear from Ex P1 that P.W.1 an intelligence developed or generated on him as indicated on him that Narcotics drugs was kept in Door No.126, Alwarthirunagar Annexe,Madras-87. So the contention that only on information P.W.1 has submitted Ex P1 report to his higher officials cannot be sustainable. The mere fact that the report has been submitted to the higher officials on the intelligence by P.W.1 will not vitiate the entire case of the prosecution. If P.W.1 has proceeded on the intelligence developed on him in his investigation, it cannot be said that the entire

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edifice of the prosecution case will fall due to the report submitted by P.W.1 under Ex P1. Only if the case of the prosecution is based on information received by P.W. 1 then the failure of P.W.1 to reduce the same into writing and submit the same to his higher officials under Section 42 of NDPS Act will be fatal since P.W.1 has proceeded with his investigation on the basis of his intelligence, failure on him to reduce the intelligence into writing in no way vitiate the case of the prosecution. It is no way stated in NDPS Act that an information received by NCB Officials shall be reduced to writing and informed the higher officials . The said contention of the learned counsel for A2 that the failure to reduce to writing intelligence (According to learned counsel "information") is fatal to the prosecution case cannot hold any water.

14. The other attack on the prosecution case by the learned counsel for A2 is that another mandatory provision under Section 50 of the NDPS Act was not followed in this case. Before conducting a search on a person, the person shall be given an opportunity whether he says that the search being conducted before the Judicial Magistrate or before the Gazetted Officer. Section 50 of NDPS Act runs as follows:

> " Conditions under which search of persons shall be conducted-
> (1) When any officer duly authorised under Section 42 is about to search any person under the provisions of Section 41, Section 42 or Section 43, he shall if such person so requires, take such person without unnecessary delay to the nearest Gazetted Officer of any of the departments mentioned in Section 42 or to the nearest Magistrate.
> (2) If such requisition is made, the officer may detain the person until he can bring him before the Gazetted Officer or to the Magistrate referred to in Sub Section (1)
> (3) The Gazetted Officer, or the Magistrate before whom any such person is brought shall, if he sees no reasonable ground for search, forth with discharge the person but otherwise shall direct that search be made.
> (4) No female shall be searched by anyone excepting a female.
> (5) When an officer duly authorised under Section 42, has reason to believe that it is not possible to take the person to be searched to the nearest Gazetted Officer or Magistrate without the possibility of the person to be searched parting with possession of any narcotic drug or pshchotropic substance, or

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controlled substance or article or document, he may, instead of taking such person to the nearest Gazetted Officer or Magistrate, proceed to search the person as provided under Section 100 of the Code of Criminal Procedure,1973.

(6) After a search is conducted under sub-section (5) , the Officer shall record the reasons for such belief which necessitated such search and within seventy two hours send a copy thereof to his immediate official superior."

The learned Special Public Prosecutor for NCB Cases placed the latest law laid down by the Apex Court in State of Punjab-v-Makhan Chand(2004(2)Scale 778). The accused in the said case was charged under Section 21 of the NDPS Act. The short facts are on 28th July 1993, S.I.Karama Chand (P.W.2) , who was working as the Station House Officer,Police Station Kotwali Barnala along with A.S.I.Bhupinder Singh, Head Constable, Nishan Singh and some other police officers were carrying out patrolling near the bus stand, Barnala, when the police party came near the bye-pass of the Chowk Bajakhana, they saw the respondent-accused alighting from a bus with a tiffin box in his hand. The movements of the accused aroused the suspicion of the police party who then apprehended the respondent-accused. They told him that they suspected him of committing an offence under the Act and told him that if he so desired, the search would be carried out in the presence of a Gazetted Officer or Magistrate. The respondent-accused, however,declined the offer, as a result of which, the tiffin box carried by him was searched by the police party. The search yielded a plastic envelope containing brown coloured tablets and one plastic box containing some inscriptions. In all, there were 37,000 such tablets recovered. After following the procedure, sample tablets were taken and test was conducted by chemical examiner, Chandigarh which reveals that it contained Meconic Acid and Morphine and Morphine to the extent of 1.08%. Hence the charge. The trial Court convicted the accused but on appeal, the High Court came to the conclusion that there is a contravention under Section 50 of NDPS Act and the High Court was of the view that since only in a public place, there was no dearth of witness as available at the time and place where the search was made. It is an admitted fact that no independent witnesses were joined in this case and also that there was nothing in the statements of P.W.1 and P.W.2 suggesting that there was any difficulty in joining independent witnesses. Hence,the High Court came to the conclusion that non joining of independent witnesses would indicate a contravention of Section 50 and that allowed the appeal setting aside the Judgment of the Additional Sessions Judge and acquitted the respondent/accused. Hence the State has preferred

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the appeal. The specific observation of the Apex Court relevant for the purpose of deciding this appeal runs as follows:

> " Apart from the aforesaid question, we are also of the view that Section 50 of the Act would not apply to a situation where the search undertaken is not of the person of the accused but of something carried in his hand. In this connection, the observations of the Constitution Bench of this court in Baldev Singh's case(supra) the Judgment of this Court in Gurbax Singh v.State of Haryana(2001) 3 SCC 28 at pp 30-32 (para 4 to 8) and in Kalema Tumba v.State of Maharashtra(1999) 8 SCC 257).

15. In State of Punjab-v- Baldev Singh(1999)6 Supreme Court Cases 172) wherein in a similar situation, the Apex Court have held as follows:

> "Section 50 of the Act prescribes the conditions under which search of a person shall be conducted. Sub Section (1) provides that when the empowered officer is about to search any suspected person, he shall, if the person to be searched so requires, take him to the nearest gazetted officer or the Magistrate for the purpose. Under sub Section (2) is laid down that if such request is made by the suspected person, the officer who is to take the search, may detain the suspect until he can be brought before such gazetted officer or Magistrate. Sub Section (3) lays down that when the person to be searched is brought before such a gazetted officer or the Magistrate and such gazetted officer or the Magistrate finds that there are no reasonable grounds for search, he shall forthwith discharge the person to be searched, otherwise he shall direct that the search be made.
>
> On its plain reading, Section 50 would come into play only in the case of a search of a person as distinguished from search of any premises etc. However, if the empowered officer, without any prior information as contemplated by Section 42 of the Act makes a search or causes arrest of a person during the normal course of investigation into an offence or suspected offence and on completion of that search, a contraband under the NDPS Act is also recovered, the requirements of Section 50 of the Act are not attracted."

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16. Under such circumstances, since the search of P.W1 resulted in the seizure of contrabands M.Os 1 and 3 to 10 from M.O.2 brief case produced by A2, it cannot be said that the mandatory provision under Section 50 of NDPS Act was not followed. Under such circumstances , I am of the view that the findings of the learned trial Judge against A2 that the mandatory provision under Section 42(1) and Section 50 of NDPS Act was not followed cannot be sustainable and warrants interference from this Court. Point is answered accordingly.

17.In the result, the Judgment against A2 in C.C.No.9 of 1993 on the file of the Court of Special Judge for NDPS Act is set aside . For question of sentence, against A2 by 25.4.2007 at 10.30a.m.

23.4.2007

A.C.ARUMUGAPERUMAL ADITYAN,J

At 10.30 a.m., on 25.4.2007, the learned counsel Mr.V.Sambamurthy appearing for the accused represents that due to some personal inconvenience A2-Rajamannar could not be present today(25.04.2007) and he undertakes to surrender A2 subsequently before the trail Court. Under such circumstances, A2's absent is recorded. A2 is convicted under Section 8 & 29 r/w 8,21 & 29 of NDPS Act and sentenced to undergo 10 years RI and a fine of Rs.1,00,000/- in default to undergo one year RI. The learned trial Judge is directed to secure the accused to serve the sentence. The Indian Currency notes and US 5000 dollars are ordered to be confiscated to State. The charges against A3 under the above provisions of law are not proved beyond any reasonable doubt. Hence the appeal against A3 is dismissed confirming the judgment against A3 in C.C.No.9 of 1993 on the file of the Special Judge for NDPS Act cases, Chennai. As far as A1 is concerned the charge abates.

Registry is directed to send the records to the trial Court immediately.

Sd/
Asst.Registrar

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Sub Asst.Registrar

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To

1. The Special Judge for NDPS Act, Chennai

2. The Intelligence Officer, Narcotics Central Bureau,
   C3A ,Rajaji Bhawan, Besant Nagar, Chennai-90.

3. The Special Public Prosecutor for NCB Cases.

Vc(co)
nm(03.05.07)

Crl.A.No.110/1999

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